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Supreme Court, U.S.
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No. 190

In the Supreme Court of the United States

October Term, 1949.

GLEN S. DELL, Petitioner,

vs.

W. A. DELANEY, JR., ZEPHYR DRILLING COMPANY, A CORPORATION, AND THE CARTER OIL COMPANY, A CORPORATION,

Respondents.

Petition for Writ of Certiorari, and Brief in Support Thereof.

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INDEX.

	PAGE
Petition for writ of certiorari	1
I. Statement of matter involved	2
II. This Court has jurisdiction	5
III. Questions presented	5
IV. Reasons relied upon for allowance of the writ.	6
Brief in support of petition for writ of certiorari	9
I. Opinions of courts below	9
II. Jurisdiction of this Court	9
III. Statement of the case	9
IV. Specifications of error	9
V. Argument	10

TABLE OF CASES.

Ashwander v. T.V.A., 297 U. S. 288, 80 L. ed. 688	7
Blacklock, et al., v. Small, et al., 127 U. S. 96, 32 L. ed. 70	7,10
Dawson v. Columbia Ave. Savings Fund, etc., Co., 197 U. S. 178, 25 S. Ct. 420, 49 L. ed. 713	7
Farr v. Detroit Trust Co., (1st Cir.) 116 F. (2d) 807	10
Ikeler v. Detroit Trust Co., (D. C., E. D. Mich.) 30 F. Supp. 643, 646, 647	10
Indianapolis v. Chase National Bank, 314 U. S. 63, 62 S. Ct. 15, 86 L. ed. 47	6,10
Industrial & Mining Guaranty Co. v. Electrical Supply Co., et al., (6th Cir.) 58 Fed. 732, 745	10

STATUTES.

United States Constitution, Art. 3, Sec. 2, Cl. 1	6
U. S. C., Title 28, Sec. 400 (Revised Act, Title 28, U. S. C., Secs. 2201 and 2202	2

IN THE SUPREME COURT OF THE UNITED STATES.

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vs.

W. A. DELANEY, JR., ZEPHYR DRILLING COMPANY, A CORPORATION, AND THE CARTER OIL COMPANY, A CORPORATION,

Respondents.

PETITION FOR WRIT OF *CERTIORARI.*

To the Honorable Fred M. Vinson, Chief Justice of the United States, and Associate Justices of the Supreme Court of the United States:

May It Please the Court:

Your petitioner, Glen S. Dille, respectfully petitions this Honorable Court for a writ of certiorari requiring the United States Court of Appeals for the Tenth Circuit to certify to this Court for its review and determination, the case of W. A. Delaney, Jr., and Zephyr Drilling Company, a corporation, Appellants, vs. The Carter Oil Company, a Corporation, and Glen S. Dille, Appellees, No. 3798, on the docket of said United States Court of Appeals for the Tenth Circuit.

I.

Statement of Matter Involved.

The plaintiff, The Carter Oil Company, a West Virginia corporation, brought this action in the United States District Court for the Northern District of Oklahoma, pursuant to Title 28 U. S. C., Sec. 400 (Revised Act, Title 28, U. S. C., Sections 2201, 2202), against the defendants Glen S. Dille, W. A. Delaney, Jr., and Zephyr Drilling Company, an Oklahoma corporation, all of whom were citizens of Oklahoma. Carter sought a declaratory judgment defining the rights of the parties in certain oil and gas leasehold estates in Garvin County, Oklahoma, and in a certain development and operation agreement it had entered into with Delaney and Zephyr.

Carter's petition (R. 3-8) with exhibits attached (R. 8-29) alleged no cause of action or claim against or controversy with any of the defendants. Carter alleged that without notice of interest in Dille, it had theretofore acquired by assignment from Delaney and Zephyr, the record owners, an undivided 60% interest in certain oil and gas leasehold estates in Garvin County, Oklahoma, and entered into an agreement with them to develop and operate said leasehold estates. Carter alleged that Dille was claiming as against his co-defendants Delaney and Zephyr an undivided 1/3 interest in said leasehold estates and was asserting the right to have the leases partitioned in kind, as appeared by a petition filed by Dille in a case pending in the District Court of Garvin County, Oklahoma, attached as Exhibit B to Carter's petition; that if Dille owned any interest in the leases, Delaney and Zephyr had a right to, and did bind his interest by the development and operating agreement (plaintiff's Exhibit A), which agreement impliedly prohibited any division or partition in kind of the lease-

hold estates. That the dispute among the defendants materially affected the liability of Carter as a purchaser of oil from said property, and Carter's rights and liabilities as operator of said property, "but except for those matters plaintiff stands disinterested and impartial as between the defendants." (R. 9)

Dille's petition in his suit against Delaney and Zephyr in the District Court of Garvin County, Oklahoma, (R. 64-72) asserted no claim against or controversy with Carter, but sought only to have Delaney and Zephyr decreed to be constructive trustees for the use and benefit of Dille of an undivided 1/3 interest in the undivided 40% interest of the leasehold estates remaining vested in Delaney and Zephyr, and for an accounting and that he have judgment against Zephyr and Delaney for one-third of the proceeds derived from sales of oil and gas leases and mineral rights within a certain described area. This was a recognition of Carter's rights as well as rights of any purchaser by any other sales theretofore made.

Dille's motion to dismiss (R. 36-37) was upon ground that Carter's purported action was fictitious because no justiciable controversy existed between Carter and Dille, and that the court was without jurisdiction because no diversity of citizenship existed since the only controversy suggested by Carter's petition was between Dille and his co-defendants Delaney and Zephyr, all of whom were citizens and residents of Oklahoma.

The answer and cross-claim of Delaney (R. 31-34) and the amended answer, counterclaim and cross-claim of Zephyr (R. 38-40), both adopt the entire theory of Carter's case. They allege no facts disclosing any antagonism, clash of interest or controversy with Carter.

Upon hearing of Dille's motion to dismiss (R. 128-143) the trial court after examining Dille's petition in the District Court of Garvin County, Oklahoma, announced (R. 130) that it appeared to the court Dille had not asserted any claim against Carter. The court then interrogated Dille and his attorney of record to ascertain what they claimed or whether they were asserting any claim against Carter, at the conclusion of which the court (R. 137-138) announced that it was obvious on the face of Carter's complaint that the principal controversy was between Dille on the one hand and Zephyr and Delaney on the other, and they all being residents of Oklahoma, as to their controversy, no diversity of citizenship existed and that the Federal Court had no jurisdiction; that Dille did not assert a claim against Carter in his complaint in Garvin County, Oklahoma; that Dille had never made any claim against Carter, and that there being no actual controversy between Dille and Carter, the court was without jurisdiction. At R. 142-143 the court sustained Dille's motion to dismiss upon the ground that there was no justiciable controversy between Carter and Dille and ordered the case dismissed.

The order dismissing case (R. 143-145) dismissed Carter's petition, the answers, amended answers, counterclaims and cross-claims of Delaney and Zephyr, motion for summary judgment of Delaney, and the entire case, without prejudice.

From this order of dismissal, Delaney and Zephyr appealed to the United States Court of Appeals (R. 145-146). *Carter did not appeal.*

Thereafter on April 15, 1949 (R. 147-153), the United States Court of Appeals reversed the case.

II.

This Court Has Jurisdiction.

(1) This petition for writ of certiorari is prosecuted pursuant to the provisions of Title 28, U. S. C., Sec. 1254.

(2) The opinion (R. 147), BRATTON, J., dissenting, and judgment (R. 153) of the United States Court of Appeals sought to be reviewed were filed April 15, 1949. Order was entered (R. 154) extending time to file petition for rehearing for ten days, on May 2, 1949. Petition for rehearing was filed (R. 181) May 12, 1949, and on May 18, 1949 (R. 183), the court entered an order denying said petition for rehearing.

III.

Questions Presented.

The question presented is whether under the constitution and laws of the United States the jurisdictional requirement of diversity of citizenship may be circumvented and evaded and jurisdiction acquired by a United States District Court to hear and determine a case or controversy between citizens of the same state upon a cross-claim filed by two defendants against a co-defendant in an action for declaratory judgment brought against them by a non-citizen plaintiff, whose complaint does not state or allege a cause of action or claim against, or controversy with, any of the defendants, and where upon inquiry by the trial court it is established without dispute or contradiction that the defendant, against whom his two co-defendants have filed cross-claim, did not have and at no time ever had or asserted a claim against or controversy with plaintiff.

IV.

Reasons Relied Upon for Allowance of the Writ.

The writ of certiorari should be allowed, because the decision of said court of appeals held and decided that:

> "It is true that judged by conventional concepts of rights of action, Carter stated no claim against Dille, or for that matter against any of the defendants. It asserted no breach of legal duty, nor asked for coercive relief. It claimed no proprietary interest in the undivided 40% interest in the leases; its asserted interest therein was to the effect that it had a duty under its contract to develop and operate the properties as a partnership enterprise, and that it could not discharge that duty orderly and efficiently unless the identity and respective rights of its partners were judicially determined. It alleged in effect that the uncertainty of the ownership of the undivided 40% interest in the leases created by Dille's suit rendered uncertain its contractual rights and liabilities, so that it could not proceed thereunder without the risk of peril to itself. It thus asserted a direct and immediate legal interest in the outcome of the controversy between the co-defendants. It sought to secure a settlement or stabilization of the rights of the parties by suing all interested parties for a declaration of their rights under a contract, in which they all claimed a legal interest. ***"
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> "We hold that Carter's complaint stated a claim for declaratory relief over which the trial court acquired jurisdiction and that it, therefore, erred in dismissing the action." (R. 151-152)

Said decision is in conflict with Art. 3, Sec. 2, Cl. 1, of the Constitution and is in conflict with decisions of this Court, on the same matter, in the following cases: *Indianapolis* v. *Chase National Bank,* 314 U. S. 63, 62 S. Ct. 15, 86 L. ed. 47;

Dawson v. *Columbia Ave. Savings Fund, etc., Co.*, 197 U. S. 178, 25 S. Ct. 420, 49 L. ed. 713; *Blacklock, et al.*, v. *Small, et al.*, 127 U. S. 96, 32 L. ed. 70; and *Ashwander* v. *T.V.A.*, 297 U. S. 288, 80 L. ed. 688.

This Court has uniformly held that to sustain federal jurisdiction on the ground of diversity of citizenship, there must exist an actual and substantial controversy between citizens of different states, all of whom on one side of the controversy are citizens of different states from all parties on the other side; that it is the duty of the court to look beyond the pleadings and arrange the parties according to their sides in the dispute. Whether the necessary collision of interest exists, is determined not by mechanical rules, but is determined and ascertained from the principal purpose of the suit, from the primary and controlling matter in dispute.

The United States District Court has no jurisdiction of a case where the only substantial claim or controversy is prosecuted by and on behalf of one defendant, who at the time the action was brought was and still is a citizen of the same state as is the defendant against whom the only substantial relief in the case is claimed; nor can there be a justiciable controversy by allegations based merely on assumed potential invasion of plaintiff's rights.

In this case Carter's interest was that of Zephyr and Delaney. Zephyr and Delaney's controversy with Dille was the only controversy in the case. Since they were all citizens and residents of Oklahoma, realignment of the parties according to their sides in the dispute destroyed the jurisdiction of the court.

Wherefore, petitioner prays that this Court issue a writ of certiorari to the United States Court of Appeals for the

Tenth Circuit, commanding said court to certify to this Court a full and complete transcript of the record and of the proceedings in said Court of Appeals had in the case numbered and entitled on its docket, No. 3798, *W. A. Delaney, Jr., and Zephyr Drilling Company, Appellants, vs. The Carter Oil Company, a Corporation, and Glen S. Dille, Appellees,* to the end that this case may be reviewed and determined by this Court as provided by the statutes of the United States, and that the judgment of said Court of Appeals of the Tenth Circuit may be reversed by this Court, and for such other relief as to this Court may seem proper.

Respectfully submitted,

ROBERT DADE HUDSON,
Tulsa, Oklahoma,
Attorney for Petitioner.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF *CERTIORARI.*

I.

Opinions of Courts Below.

No written opinion was rendered by the trial court. Journal entry of the order of the trial court sustaining petitioner's motion to dismiss, appears at page 143 of record. Opinion of the Court of Appeals appears in record beginning at page 157, and is reported in 174 F. (2d) 314 (Adv.).

II.

Jurisdiction of This Court.

In Paragraph II of Petition for Writ of Certiorari, the grounds of jurisdiction of this Court are stated.

III.

Statemet of the Case.

A sufficient statement of the case has been made in Paragraph I of Petition for Certiorari, which in the interest of brevity is not repeated here.

IV.

Specifications of Error.

The errors of the United States Court of Appeals for the Tenth Circuit relied upon for reversal of its judgment in this case are stated in Paragraph IV of Petition for Certiorari, and are adopted by reference as a part of this brief.

V.

Argument.

In this case diversity of citizenship was the sole ground of federal jurisdiction. While there was diversity of citizenship between Carter, a West Virginia citizen, and Dille, Zephyr and Delaney, Oklahoma citizens, Carter stated no claim against or controversy with any of the defendants. Carter's complaint as it appears to counsel, discloses that Zephyr and Delaney were not real defendants but were on Carter's side of the case, or rather that Carter was on their side of a dispute with Dille, since Carter had no claim against or controversy with Dille. The whole object of Carter's complaint appears to be to enable Delaney and Zephyr, citizens of Oklahoma, to file a cross-bill against Dille, also a citizen of Oklahoma, and thus remove to the federal court for adjudication, a controversy pending in litigation between the defendants in the District Court of Garvin County, Oklahoma, which case Delaney and Zephyr could not have removed to the federal court, nor could that case have been originally filed in the federal court, since all of the parties were citizens of Oklahoma. *Industrial & Mining Guaranty Co.* v. *Electrical Supply Co., et al.*, (6th Cir.) 58 Fed. 732, 745; *Blacklock, et al.*, v. *Small, et al.*, 127 U. S. 96, 32 L. ed. 70; *Ikeler* v. *Detroit Trust Co.*, (D. C., E. D. Mich.) 30 F. Supp. 643, 646, 647, aff'd in *Farr* v. *Detroit Trust Co.*, (1st Cir.) 116 F. (2d) 807.

In *Indianapolis* v. *Chase National Bank*, 314 U. S. 63, 36 L. ed. 48, where diversity was also the sole ground of federal jurisdiction, it was said:

> "Diversity jurisdiction cannot be conferred upon the federal courts by the parties' own determination of who are plaintiffs and who are defendants. It is our duty, as it is that of the lower federal courts to 'look beyond the

pleadings and arrange the parties according to their sides in the dispute.' *Dawson* v. *Columbia Ave. Sav. Fund, S. D. Title & T. Co.*, 197 U. S. 178, 180, 49 L. ed. 713, 715, 25 S. Ct. 420. Litigation is the pursuit of practical ends, not a game of chess. Whether the necessary 'collision of interests,' *Dawson* v. *Columbia Ave. Sav. Fund, S. D. Title & T. Co., supra,* at 181, exists, is therefore not to be determined by mechanical rules. It must be ascertained from the 'principal purpose of the suit,' *East Tennessee V. & G. R. Co.* v. *Grayson*, 119 U. S. 240, 244, 30 L. ed. 382, 383, 7 S. Ct. 190, and the 'primary and controlling matter in dispute,' *Merchants Cotton Press & Storage Co.* v. *Insurance Co. of N. A.*, 151 U. S. 368, 385, 38 L. ed. 195, 204, 14 S. Ct. 367, 4 Inter. Com. Rep. 499. These familiar doctrines governing the alignment of parties for purposes of determining diversity of citizenship have consistently guided the lower federal courts and this court."

The Court in that case observed that plainly Chase and Indianapolis Gas Co. were partners in litigation. To paraphrase: Plainly, Carter and Delaney and Zephyr were partners in litigation. What Carter wanted, Delaney and Zephyr also wanted, and in fact Carter, Delaney and Zephyr were on the same side of the case against Dille and were litigating the only controversy in the case which was between Zephyr and Delaney on one side and Dille on the other.

Petitioner respectfully submits that the Writ of Certiorari applied for should be granted by this Court and that upon a review of the decision and judgment of the Court of Appeals in this case, that the same be reversed.

Respectfully submitted,

ROBERT DADE HUDSON,
Tulsa, Oklahoma,
Attorney for Petitioner.